REMARKS

Claims 1 – 30 have been examined. Claims 1 – 11, 16 – 22, and 24 – 30 stand rejected under 35 U.S.C. §102(e) as anticipated by U.S. Pat. Publ. No. 2002/0161647 ("Gailey"); and Claims 12 – 15 and 23 stand rejected under 35 U.S.C. §103(a) as unpatentable over Gailey in view of U.S. Pat. Publ. No. 2003/0078788 ("Sussman").

The claims have been amended to characterize certain aspects more particularly. Specifically, all of the independent claims now require that a database be populated with locations for representatives of a business and representatives of one or more competitors to the business. The location information in the database is used to calculate a probability that quantifies a level of competition to the business provided by the competitor(s) (Application, p. 7, ll. 21 – 29). This quantification of a level of competition is calculated in terms of a distance measure, such as a probability that at least one of the competitor representatives exists within a predetermined distance of each business representative (*id.*, p. 7, ll. 22 – 25), a probability that at least one of the business representatives exists within a predetermined distance of each competitor representative (*id.*, p. 8, ll. 4 – 6), or a probability that any of the competitor representatives exists within a predetermined distance of any of the business representatives. This quantified level of competition is correlated with demographic data corresponding to the location information (*id.*, p. 8, ll. 21 – 22).

This combination of limitations is neither taught nor suggested by the cited art. In particular, Gailey is directed to a system for tracking purchases offered to customers through a location-based services system (Gailey, ¶2). The location-based services system essentially allows customers to identify desired services based on certain criteria that include the location of the services (*id.*, ¶53). There is no disclosure of quantifying a level of competition to a business provided by competitors to the business in terms of distance measures between representatives of the business and of the competitors — Gailey merely permits customers to find a business based in part on its location and monitors the effectiveness of advertising used within such a system.

The Office Action cited ¶81 of Gailey as disclosing the limitation of Claim 7, which is related to the current limitation requiring quantification of a level of competition. This paragraph merely describes the functionality of the location-based services system to find a specifically identified business that is closest to a specified location (Burger King, as identified in the request "What is the address of a Burger King restaurant that is close to my present location?," *id.*, ¶78). The cited portion does not disclose any consideration of the location of competitors to Burger King, nor does it disclose any quantification of a level of competition provided by those competitors in terms of a distance measure between Burger King and the competitors.

Similarly, the Office Action cited ¶¶ 111 – 113 as disclosing the limitation of Claim 9, which is related to the current limitation requiring correlating the quantified level of competition with demographic data. These paragraphs merely describe various ways in which the effectiveness of advertising may be analyzed, one possible way being in terms of demographic information. But the analysis of how effective advertising is is completely different from a correlation of a quantified level of competition with demographic data. It is respectfully believed that a *prima facie* case under §102 cannot be established merely because Gailey describes a use of demographic data without showing it to be used in the manner claimed.[1]

It is thus believed that all of the independent claims are patentable over the cited art and that the dependent claims are patentable by virtue of their dependence from patentable claims.

In addition, Applicants respectfully note that the Office Action has not established that the cited portions of Gailey are prior art to the application. The filing date of Gailey is April 26, 2002, which is after the December 19, 2001 filing date of the application. While Gailey claims the benefit of an earlier filing date of April 27, 2001 for U.S. Prov. Pat. Appl. No.

[1] *See* a recent (unpublished) decision of the Board of Patent Appeals and Interferences: "It is well settled, however, that anticipation is not established if in reading a claim on something disclosed in a reference it is necessary to pick, choose and combine various portions of the disclosure not directly related to each other by the teachings of the reference," *Ex Parte Beuther*, 71 USPQ2d 1313, 1316 (2004, unpublished), *citing In re Arkley,* 172 USPQ 524, 526 (CCPA 1972).

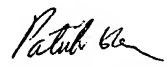
60/286,916, such a claim is valid only to the extent that there is an enabling disclosure in the provisional application ("The 35 U.S.C. 102(e) date of a reference ... is its earliest effective U.S. filing date, taking into consideration any proper benefit claims to prior U.S. applications under 35 U.S.C. 119(e) or 120 if the prior application(s) properly supports the subject matter used to make the rejection," MPEP 706.02(f)(1), emphasis added). Gailey is invalid as prior art to the application without a demonstration that those disclosures relied on find enabling support in the provisional application.

CONCLUSION

In view of the foregoing, Applicants believe all claims now pending in this Application are in condition for allowance. The issuance of a formal Notice of Allowance at an early date is respectfully requested.

If the Examiner believes a telephone conference would expedite prosecution of this application, please telephone the undersigned at 303-571-4000.

Respectfully submitted,



Patrick M. Boucher
Reg. No. 44,037

TOWNSEND and TOWNSEND and CREW LLP
Two Embarcadero Center, Eighth Floor
San Francisco, California 94111-3834
Tel: 303-571-4000
Fax: 415-576-0300
PMB:pmb
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